85-1872

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES C. COOK

Petitioner

v.

PETER KIEWIT SON'S COMPANY, et al.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

Charles C. Cook
5956 Cherry Glen Rd.
Vacaville, Calif. 95688
Petitioner
Pro Se

27 pp
Gilbert

QUESTIONS PRESENTED

1. The underlining subject matter at issue in Case No. CIV. S-83-877-MLS and Case No. CIV. S-83-1606-RAR is the collection of income taxes pursuant to the XVI Amendment to the United States Constitution. Was the certification of ratification of the XVI Amendment fraudlent and therefore, void and of no effect ?

2. Petitioner filed newly discovered evidence showing that the XVI Amendment to the United States Constitution was never lawfully ratified. Did the Court error by refusing to address and rule on that question ?

3. The United States District Court below ruled that it lacked subject matter Jurisdiction to hear Case No. CIV S-83-877-MLS. In view of the Court's admission of lack of jurisdiction, did said Court

error by denying remand of the case to State Court upon the demand of the Petitioner ?

4. The United States District Court below ruled that it lacked Subject Matter Jurisdiction to hear Case No. CIV. S-83-1606-RAR and there upon dismissed the said action. Did said Court error by issuing writs and injunctions subsequent to that dismissal?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER, Charles C. Cook, a freeman, white, and of legal age, comes before this Honorable Court to claim all of his Inalienable Rights under the United

States Constitution, and the first Ten Amendments. He petitions herein for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit, which failed to address the definitive issues presented to them of the fraudulent certification of the Sixteenth Amendment and jurisdiction of the District Court.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, filed October 31, 1985, affirmed in part and reversed in part, the appeal from the United States District Court for the Eastern District of California. The Honorable Raul A. Ramirez, District Judge, Presiding, The Honorable Milton L. Schwartz, District Judge, Presiding; Argued and Submitted - August 13, 1985;

Decided October 31, 1985.

Before: NORRIS and REINHARDT, Circuit Judges, and Wm. J. Jameson, District Judge.

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JURISDICTION

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The Opinion and Order appealed from was filed October 31, 1985. The Order of the United States Ninth Circuit Court of Appeals denying petition for rehearing was made on November 26, 1985. The jurisdiction of this Court is invoked under 28 U.S.C., Sectons 1252 and 1254 (1).

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CONSTITUTIONAL PROVISIONS INVOLVED

.....

ARTICLE V

The congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, Shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the

several States, or by conventions in three-fourths thereof,as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

.....

AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

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STATEMENT OF THE CASE

On 5/2/83, Petitioner, Charles Cook filed, in Superior Court of the State of California in and for the County of Solano a civil action for breach of contract against his employer, Peter Kiewit & Son, Co. identified as Case No. 84492. In this action the trial attorney, Tax Division, of the Department of Justice filed a brief as amicus curiae. This action was

dismissed.

On 6/23/83, Petitioner, Charles Cook filed a new civil action for breach of contract against the said Peter Kiewit & Sons, Co. and added certain other respondents. This action was again filed in the said Superior Court and was identified Case No. 84882.

On 8/4/83, one of the respondents in the said Case No. 84882 presented to the court a motion for removal to the respondent's court. This case was thereupon identified as Case No. Civ. S-83-877-MLS. The said Charles Cook, as Petitioner, objected to the removal and requested that the said case be remanded to State Court from whence it had been removed. Instead, the said case was simply dismissed for lack of subject matter jurisdiction.

On 12/27/84, the said Charles Cook, who is petitioner herein brought Case No.

Civ. S-83-1606-RAR against the same respondents with additional respondents added, which case is here under appeal. Respondent Court herein determined that it did not possess subject matter jurisdiction to hear the said case Civ. S-83-1606-RAR, dismissed the said case, expunged and dissolved all liens connected therewith and issued an injunction purportedly prohibiting the said petitioner Charles Cook from "filing or attempting to file, and from otherwise prosecuting any complaint, claim or action arising out of the same facts as those contended in the aforesaid State and Federal actions and from filing or attempting to file in any court or recorder's office located in this judicial district any purported lien, lis pendens notice, etc."

On 3/19/84, Petitioner, Charles Cook moved Respondent Court to vacate the said

order and to prove its jurisdiction to act further in the said case after disclaiming jurisdiction to hear and to decide it, and to state DEFINITIVELY WHETHER SUCH JURIS-DICTION ARISES IN COMMON LAW OR ADMIRALTY. Appellant Cook, the moving party in said motion to vacate, did not, however, oppose the dismissal of the said case nor the dissolution of liens, lis pendens notices, etc., but instead stipulated to them.

On 4/23/84, the respondent Court heard the said motion and stated that it had no certain knowledge concerning the jurisdictional questions raised therin and, purely for the sake of appeal, ruled that Title 28 U.S.C. 1651 is the source of the court's power to issue writs and injunctions even after the court has determined that it possesses no jurisdiction to hear and decide a particular cause.

On 4/30/84, Petitioner Cook filed premature notice of appeal believing that Respondent Court had so suggested.

On 6/6/84, judgement was entered.

On 6/15/84, Petitioner Cook filed a "New Notice of Appeal" with the United States District Court for the Eastern District of California in case CIV. S-83-1606-RAR / C.A. # 85-2165

On 10/1/84, Order, Granted Appellees (Government) extension to file brief. C.A. #84-2165 / D.C.# CIV. S-83-1606-RAR.

On 10/30/84, Order, Granted Appellees, Peter Kiewit Son's Co. et al., extension of time to file brief. C.A.# 84-2165 /D.C.# CIV, S-83-1606-RAR.

On 11/19/84, Order, Granted Appellant extension of time to file reply brief. C.A. # 84-2165 / /D.C. # CIV. S-83-1606-RAR.

On 2/1/85, Appellant filed "Notice of Appeal", D.C. # CIV. S-83-877-MLS / C.A. # 85-1649.

On 3/6/85, Hearing Calendar Notice, for oral hearing on April 8, 1985. C.A. # 84-2165 / D.C. # CIV. S-83-1606-RAR.

On 3/22/85, Received, Appellants "Statement of Related Cases and Opposition to Statement of Solano County Appellees "C.A. # 84-2165 / D.C. # CIV. S-83-1606-RAR.

On 4/2/85, Order, Case removed from San Francisco Calendar for April 8, 1985. C.A. # 84-2165 / D.C. # CIV. S-83-1606-RAR.

On 5/23/85, Order, granted Federal Appellee Meuwissen extension of time to file brief. C.A. # 85-1649 / D.C. # CIV. S-83-877-MLS

On 6/5/85, Appellant "Oppostiton to

Consolidation of Appeals". C.A. # 85-1649 and C.A. # 84-2165.

On 6/18/85, Order granted Appellant extension of time to file answering brief, C.A. # 85-1649 / D.C. # CIV. S-83-877-MLS.

On 6/29/85, Order, granting Appellees motion to consolidate appeals for oral arguments. C.A. # 84-2165 and C.A. # 85-1649.

On 7/13/85, Oral argument presented in Ninth Circuit Court of Appeals. C.A. # 85-1649 and C.A. # 84-2165.

On 10 31/85, Opinion, of the United States Court of Appeals for the Ninth Circuit. C.A. # 85-1649 and C.A. # 84-2165. (Exhibit "A", appendix, separately presented.)

On 11/11/85, Appellant "Petition for Rehearing" C.A.# 85-1649 and C.A. # 84-2165. (Exhibit "B", appendix, separately

presented)

On 11/26/85, Order, denying the petition for rehearing. C.A. # 85-1649 and C.A. # 84-2165. (Exhibit "C", appendix, separately presented.)

On 12/13/85, Order on Motion for Stay of Mandate. C.A. # 85-1649 and C.A. #84-2165.

On 12/26/85, Order, granted Appellant an extension of stay of mandate to file brief to United States Supreme Court. C.A. # 85-1649 and C.A. # 84-2165.

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REASONS FOR GRANTING THE WRIT

FRAUD OF THE XIV AMENDMENT

The Petitioner comes to this Honorable Court as a Freeman, though as in chains, to defend his Honor, his personal property , his Sacred and Inalienble Rights. It has come to the attention of

Petitioner that a disturbing pattern is developing in cases where the issue of a FRAUDULENT CERTIFICATION of the ratification of the XVI Amendment to the United States Constitution has been placed before the lower Courts. The issue presented to these Courts is the CRIME OF FRAUD, alledgedly perpetrated by Secretary of State Philander Chase Knox, in his FRAUDUDLENT certification of the ratification of the XVI Amendment.

The Petitioner has been damaged by the FRAUD of the XIV Amendment. Petitioner is not only a white person, but also free, that is to say, without boon, benefit, franchise, privilege, i.e., from Federal or State Governments. Requiring no benefits or privileges. Petitioner has waived no rights whatsoever where the governments might take action upon the Petitioner. And Petitioner has

produced no evidence of any waiver of rights contrary to Respondents claims. Petitioners protection of rights existin in the Original United States Constitution, its Original Bill of Rights, and the Original California Constitution.

And it is evident by the abuses of the bureaucratic officials, public servants, officials, public servants, and certain officers of the courts. under color of law, that their intent is to perpetuate the greatest FRAUD in the history of this Nation. Though Petitioner comes to this Honorable Court alone to defend his Ancient and Inalienable Rights as only a Freeman can, he is aware of approximately twenty million, to an estimated forty million other concerned United States Citizens, who believe in our court system, and in the basic and sound principles outlined in our United States Constitu-

tion, that is to protect the citizens from governmental abuses. The FRAUDLENT XVI AMENDMENT is being masqueraded under the color of law, to take from the United States Citizens their personal property and their Ancient and Inalienable Rights. The Petitioner comes to this Honorable Court to prove that the XVI AMENDMENT IS A FRAUD, and to have this court declare the XVI Amendment null and void. And to protect the Petitioners Ancient and Inalienable Rights.

Petitioner has been made further aware that with the judicial branch rests the final decision as to whether an act of Congress is constitutional. In the case of McCulloch v. Maryland the Supreme Court said:

> "Should Congress, in the execution of its powers adopt measures which are prohibited by the Constitution, or should Congress under the

> pretext of executing its powers pass laws for the accomplishment of objects not entrusted to the Government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."
>
> McCulloch v. Maryland, 4 Wheat. 316.

And in the case of Butler v. United States, holding the Agricultural Adjustment Act unconstitutional, the Supreme Court said:

> "When an act of Congress is appropriately challenged in the courts as not conforming to the Constitutional mandate, the judicial branch of the Government has only one duty--to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former."
>
> Butler v. United States, 297 U.S. 1.

Petitioner has found from the amount of evidence to support the charges of the FRAUD of the XVI Amendment, that the documentation, case cites, and other

materials are far too voluminous to include in this petition, and have been presented separately in an appendix for the convenience of this court, in exhibit form.

The best example of the FRAUDLENT XVI AMENDMENT is reproduced from the archives of the State of Kentucky from their Senate journal, (see exhibit "D", appendix separately presented)

Petitioner herein presents documentation from the national archives on the Ratification of the XVI Amendment. Petitioner will not speculate on the reasons why Secretary of State, Philander C. Knox FRAUDLENTLY CERTIFIED THE XVI AMENDMENT. Petitioner only shows that the ACT OF FRAUD was committed. This documentation is presented as Exhibit "E", (appendix separately presented).

Petitioner, through his research and general search of information as to the requirements for ratification of Amendments to the U.S. Constitution, as delineated in Article V of the U.S. Constitution, has aquired so much documentation that the table of cases, statutes and other authorities requires seven pages alone to list, and are too voluminous to include in this petition. For the convenience of this Honorable Court they have been listed as Exhibit "F", (appendix separately presented), which will show the XVI Amendment to read: " Congress shall have power to ____ and collect taxes on _ _____ from whatever derived without ___ _ apportionment among the several States and ___ __ __ census ____ ____ ".

Petitioner would respectfully remind this Honorable Court of Dodge v. Woolsey, from page 348;

"....The same article declares that no amendment, which might be made prior to the year 1808, should, in any manner, affect the first and fourth clauses in the ninth section of the first article, and that no State, without its consent, shall be deprived of its equal suffrage in the senate.The first being a temporary disability to amend, and the other two permanent and unalterable exceptions to the power of amendment.

Now, whether such a supremacy of the constitution, with its limitations in the particulars just mentioned, and with the further restriction laid by the people upon themselves, and for themselves, asto the modes of amendment, be rightor wrong politically, no one can denythat the constitution is supreme, as has been stated, and that the statement IS IN EXACT CONFORMITY WITH IT."
(emphasis added)

Dodge v. Woolsey,(1856)
18 How. (US) 331.

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LACK OF SUBJECT MATTER JURISDICTION

Once the District Court has determined that it lacks subject matter jurisdiction it could only remand the case back

to the State Court.

Judges Schwartz and Ramirez clearly stated that they did not have subject matter jurisdiction and Petitioner did not and has not waived the subject matter of the litigation.

> "Waiver of Constitutinal Rights not only must be voluntary, but must be knowing intelligent acts done with sufficient awareness of the relevant circumstance and likely consequence."
> Brady v. U.S., 379 US 742, 748.

Judges Schwartz and Ramirez claim of 28 U.S.C., Sec. 1651 can only be used IF THEY HAVE A JURISDICTION IN THE LITIGATION, which they DENIED they had. Without Sec. 1651 the substantiality doctrine is moot, as assumed jurisdiction foreign to the litigation is void.

> ....."But the lack of jurisdiction of a federal court touching the subject matter of the litigation cannot be waived by the parties, and the district court should, therefore, have declined sua sponte, to proceed in the cause."
> United States v. Corrick, 298 U.S. 435.

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CONCLUSION

For the reasons outlined above, Petitioner requests that this most Honorable Court grant His Petition for Writ of Certiorari, or in the alternative, declare the XVI Amendment to the United States Constitution null and void, and that the Opinion and Order of the United States Court of Appeal for the Ninth Circuit, be summarily reversed, or such other further relief as this Honorable Court may deem appropiate.

RESPECTFULLY SUBMITTED this 31st. day of March 1986.

CHARLES C. COOK
5956 Cherry Glen Rd.
Vacaville, Ca. 95688

Petitioner
Pro Se

DECLARATION

I, CHARLES C. COOK, declare that I am the Petitioner in the foregoing action, that I have read the contents thereof, that they are true to the best of my knowledge except those allegations based on informaton and belief, and as to those, I believe them to be true.

DATED: March 31 , 1986.

/s/ Charles C. Cook
CHARLES C. COOK, PETITIONER
Pro Se.

//////////////////////

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail, first-class postage prepaid to:

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DATED: April 3, 1985

/s/ Carmella M. Kosar
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CLERICAL CORRECTIONS : COOK v. KIEWIT, ET AL., as of May 6, 1986.
"Petition was returned on March 14, 1986, retyped by March 31, 1986---Mailed on April 3, 1986 to United States Supreme Court."

PETITION FOR WRIT OF CERTIORARI

Page 14
Line 20 'inalienble' to 'inalienable'.
Page 21.
Line 21 "asto' to 'as to'.
Line 22 'rightor' to 'right to'.
Line 23 'denythat' to 'deny that'

APPENDICES TO:
PETITION FOR WRIT OF CERTIORARI

Page 4A.
Line 1 'actgions' to 'actions'
Page 6A.
Line 20 'immujnity' to 'immunity'
Page 7A.
Line 18 'forun' to 'found'
Page 10A.
Line 15 'anf' to 'and'
Page 11A.
Line 1 'enjined" to 'enjoined'
Page 19A.
Line 13 'up9on' to 'up on'
Page 5B.
Line 1 'dertification' to 'certification'
Line 4 'the' to 'The'
Line 14 'privat' to 'private'
Line 17 'lthe' to 'the'
Line 19 'Clifornia' to California"
Page 7B.
Line 9 'toemply' to " to imply'
Line 14 'anyh' to any'
Line 15 'rrights' to 'rights'
Page 8B.
Line 9 'p;resented' to 'presented'

CLERICAL CORRECTIONS:
COOK v. KIEWIT, ET AL.

Page 10B.
Line 12 'tria' to 'trial'
'cound' to 'could'
Line 19 'p;eers' to 'peers'
Page 12B.
Line 10 'pap;ers' to 'papers'
Page 13B.
Line 7 'sppellees' to 'appellees'
Page 14B.
Line 16 'Alsom' to 'Also'
'/appellant' to 'appellant'
Line 18 'njullity' to 'nullity'
Page 15B.
Line 4 'RiverS.' to 'River S.'
line 14 'Sstate' to State'
Page 16B.
Line 20 'ction' to 'action'
Page 18B.
Line 3 'intervntion' to 'intervention'
Page 19B.
Line 22 'sppellant' to 'appellant'
Page 20B.
Line 21 'Procxess' to 'Process'
Page 24B.
Line 24 'werved' to 'served'
Page 30B.
Line 9 'tnereof' to 'thereof'
Page 34B.
Line 2 'dorporation' to 'corporation'
Line 13 'tradesan' to 'tradesman'
Page 39B.
Line 22 'ellegal' to 'illegal'
Page 40B.
Line 10 'sle' to 'sole'
Line 13 'fiolation' to 'violation'

CLERICAL CORRECTIONS:
COOK v. KIEWIT, ET AL.

NOTE: Two pages have been improperly numbered out of sequance the pages are shown as 44B and 42B, whereas they shoud be in sequance of 43B and 44B.

Page 42B.
Line 17 'p;roper' to 'proper'
Page 45B.
Line 8 'inmproper' to 'improper'
Page 49B.
Line 10 'cort' to 'court'
Line 14 'lAction' to Action'
'Remedyu' to 'Remedy'
Page 1D.
Line 1 'followiong' to 'following'
Line 19 'proision' to ' provision'
'Senat' to Senate'
Page 3D.
Line 9 'intnents' to 'intents'
Page 4D.
Line 10 'aurhentic' to authentic'
Line 16 'andnays' to ' and nays'
Page 5D.
Line 3 'after the name of Brown, R. B. add the name of "Graham, J. C.".
Line 16 'Mewcomb, H. D.' to 'Newcomb, H. D.'
Page 3E.
Line 17 'teh' to 'the'
Page 4E.
Line 14 'Resoutio9n' to 'Resolution'
'peoposing' to 'proposing'
Page 28 F.
Line 13 'lthat' to 'that'
Page 48F.
Line 10 'Comgress' to 'Congress'

CLERICAL CORRECTIONS:
COOK v. KIEWIT, ET AL.

Page 54 F.
Line 11 'Congrss' to Congress'
Page 58F.
Line 23 'manerering' to 'maneuvering'
Page 59F.
Line 3 'knowlegeable' to 'knowledgeable'
Page 68F.
Line 4. 'sction' to 'section'
Page 71F.
Line 13 'ssubmitting ' to 'submitting'
Page 82F.
Line 16 'Nixion' to 'Nixon"

DECLARATION

I, CHARLES C. COOK, declare that I am the Petitioner in the foregoing action, that I have read the contents thereof, that they are true to the best of my knowledge except those allegations based on information and belief, and as to those, I blieve them to be true.

DATED; MAY 6, 1986 , at Vacaville, California.

/s/ Charles C. Cook
CHARLES C. COOK / PETITIONER
Pro Se.